

Minister
of National Defence



Ministre
de la Défense nationale

Ottawa, Canada K1A 0K2

JUN 21 2012

Mr. Glenn M. Stannard, OOM
Chairperson
Military Police Complaints Commission
270 Albert Street, 10th Floor
Ottawa ON K1P 5G8

Dear Mr. Stannard:

I have received your letter dated June 18, 2012, in which you request that I waive solicitor-client privilege in respect of legal advice provided by Departmental legal advisors in matters relating to the unfortunate death of Corporal Stuart Langridge. Complaints regarding the conduct of Military Police investigators in investigating matters related to this death are currently the subject of a Public Interest Hearing before the Military Police Complaints Commission (MPCC).

The Supreme Court of Canada has repeatedly emphasized the fundamental importance of solicitor-client privilege to the administration of justice in Canada. Madam Justice Arbour, writing for the majority of the Court in the case of *Lavallee, Rackel & Heintz v. Canada (Attorney General)*, [2002] 3 S.C.R. 209 at para 36, declared:

Indeed, solicitor-client privilege must remain as close to absolute as possible if it is to retain relevance. Accordingly, this Court is compelled in my view to adopt stringent norms to ensure its protection.

As a Minister of the Crown, I must be guided by principle and have regard to the fundamental practices of the administration of justice in this country.

It is extremely rare that this privilege will be waived. In this case, the fact that the MPCC is seeking a waiver of solicitor-client privilege is truly unusual and exceptional.

Paragraph 250.41(2)(a) of the *National Defence Act* provides that the MPCC may not receive or accept any evidence or other information that would be inadmissible in a court of law by reason of any privilege under the law of evidence. Parliament has thus unequivocally expressed its intent that the MPCC can and should accomplish its mandate without access to privileged communications between lawyers and their clients.

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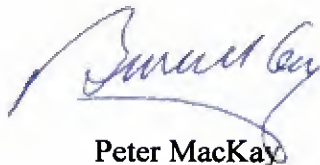
I would also note that former Chief Justice Patrick LeSage, the Second Independent Review Authority, received submissions from the MPCC directly on this issue during the course of his review and did not accept them. He unequivocally stated in his report, which was tabled in Parliament, that "the jurisprudence on solicitor-client privilege is clear and established. I see no reason to recommend change."

For these reasons, your request for me to waive solicitor-client privilege is neither warranted nor advisable in this case. Such a waiver would not accord with the state of the law in Canada or with the nearly absolute practice of maintaining confidentiality over communications between clients and legal advisors. I must therefore decline your request for the unusual and exceptional waiver that you propose.

The Government of Canada remains committed to cooperating with the MPCC to the fullest extent possible, consistent with the law on solicitor-client privilege, and within the mandate that Parliament has given to the MPCC in the *National Defence Act*.

I would also note that the Government of Canada is very ably represented before the MPCC Public Interest Hearing by counsel, Ms. Elizabeth Richards. I would ask that in future any communication on substantive issues pertaining to the hearing be done through counsel.

Sincerely,



Peter MacKay

c.c. Ms. Elizabeth Richards
Senior Counsel, Justice Canada

